

LIQUOR LAWS IN NEW MEXICO

ONLINE

PRESENTED BY:

DPS – Law Enforcement Academy
Santa Fe, New Mexico

DATE _____

GOALS

- Students will gain an understanding of the Liquor Control Act.
- Students will learn how knowledge of the Liquor Control Act can make them more effective law enforcement officers.

OBJECTIVES

Upon completion of this course, students will be able to:

- Describe the functions of the major agencies charged with licensing and enforcement of the “Liquor Control Act.”
- Discuss liquor control act laws, with a focus on sales to minors and sales to intoxicated persons.
- Learn what field officers and other agencies can do to reduce liquor control act violations

SOURCES

- New Mexico Criminal and Traffic Manual.
- New Mexico Statutes Annotated.
- State and federal case law.

ESTIMATED TIME One hour.

PREPARED BY

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DATE APPROVED _____ **ACCREDITATION NUMBER** _____

INTRODUCTION

In the minds of many, New Mexico is an ideal state, the Land of Enchantment. And yet, regrettably, our state suffers from a reputation of severe alcohol abuse. This reputation arises from the fact that New Mexico has a high rate of vehicular homicide and domestic violence. Many other crimes are also a result of alcohol abuse.

INNOVATIVE THINKING IN LAW ENFORCEMENT

Typically, an officer wanting to go after alcohol related crimes would refer to Chapter 30 (Criminal Offenses) or Chapter 66 (Motor Vehicles) of the state statutes. But there is another approach, one that many officers like because it often goes to the root of the problem. We are referring to Chapter 60-3-2 (A), also known as the “Liquor Control Act.”

POLICY OF THE LIQUOR CONTROL ACT

It is the policy of the Liquor Control Act that the sale, service and public consumption of alcoholic beverages shall be licensed, regulated and controlled so as to protect the public health, safety and morals of every community in the state. NMSA 1978, Section 60-3A-2 (A).

PRIMARY AGENCIES OF LIQUOR CONTROL ACT

Introduction

Alcohol abuse has always been a fact of life in America. So serious has concern about it been that in 1920 a constitutional amendment was passed establishing Prohibition. Another constitutional amendment in 1933 repealed Prohibition.

Some states are directly involved with selling alcohol to the public. In New Mexico, the private sector, by becoming a licensed liquor establishment, can sell alcohol but regulations must be followed. The

great majority of licensed liquor establishments follow the law. Some establishments, however, get a little lax in their ways. To help with compliance we are fortunate to have agencies to help enforce the policy of the Liquor Control Act.

There are three agencies involved in licensing and enforcement of the Liquor Control Act. They are:

1. Regulation and Licensing Department.
2. Alcohol and Gaming Division.
3. Department of Public Safety (DPS) – Special Investigations Division (SID).

We will now discuss these agencies and their responsibilities.

1. Regulation and Licensing Department

This is the agency that has the authority to issue and regulate licenses for a number of agencies.

2. Alcohol and Gaming Division

The alcohol and gaming division of the regulation and licensing department has authority over all matters relating to the issuance, denial, suspension or revocation of licenses under the Liquor Control Act. The division may request DPS to provide investigatory and enforcement support. NMSA 1978, Section 60-3A-7.

A liquor license is valuable in New Mexico. The Alcohol and Gaming Division has administrative authority to make sure licensees stay in compliance with the Liquor Control Act. Some of the powers of this division include:

- Authorized to examine and to require the production of any pertinent records, book, information or evidence.

- Require the presence of any person and to require that person to testify under oath concerning the subject matter of the inquiry.
- The power to issue subpoenas.
- Require criminal history background checks for the purpose of administering the licensing provisions of the Liquor Control Act.
- Develop rules and orders to administer the licensing provisions. NMSA 1978, Section 60-3A-9 & 10.
- May request investigators of the Special Investigations Division (SID) to investigate licensees or activities that appear to be in violation of the Liquor Control Act. NMSA 1978, Section 60-4B-4.1.

Grounds for suspension

The director may suspend or revoke the license or fine the licensee in the amount of \$10,000.00, or both, when:

- A licensee has violated provisions of the Liquor Control Act.
- Been convicted of a felony.
- Permitted his or her licensed premises to remain a public nuisance in the neighborhood where it is located after written notice that investigation by the department has revealed that the establishment is a public nuisance in the neighborhood.
- A licensee is entitled to a hearing prior to a revocation, suspension or fine becoming effective. NMSA 1978, Section 60-6C-1.

Department of Public Safety - Special Investigations Division

DPS has authority over all investigations and enforcement activities required under the Liquor Control Act. NMSA 1978, Section 60-3A-6. DPS has three major law enforcement units (1) the State

Police, (2) the Motor Transportation Division (MTD), and 3) the Special Investigations Division (SID). Our focus will be on SID.

DPS - Special Investigations Division

The main difference between the alcohol and gaming division and the special investigations division is that alcohol and gaming is administrative and concerned with licensing. The Special Investigations Division is street level and enforces the law through civil (citations) and criminal enforcement. NMSA 1978, Section 60-3A-3 (F)(G).

- Within thirty days following the issuance of a citation pursuant to the Liquor Control Act, SID or local law enforcement shall report violations of that act to the alcohol and gaming division. NMSA 1978, Section 60-4B-4.1.

REVIEW OF LIQUOR CONTROL ACT LAWS

There are a number of laws but we will focus on two: sales to minors and sales to intoxicated people.

Sale to intoxicated persons.

It is a violation of the Liquor Control Act for a person to sell or serve alcoholic beverages if the person knows or has reason to know that the person he or she is selling to is intoxicated. NMSA 1978, Section 60-7A-16

Criminal penalty: NMSA 1978, Section 60-7A-25

A person who violates any provision of the Liquor Control Act that is not declared to be a felony is guilty of a misdemeanor. The penalty for sale to intoxicated persons is a misdemeanor.

In addition to state statutes, the Alcohol and Gaming Division

has rules that provide useful information:

15.10.51.11 Sales to Intoxicated Persons

- No licensee shall sell or serve to an intoxicated person if the licensee knows or has reason to know that the person is obviously intoxicated.
- A blood alcohol content level of .14 or higher on a breath or blood test taken not more than ninety minutes after the selling or serving of alcohol shall be presumptive evidence that the person was intoxicated at the time of the last sale. (Under the previous rule, the test had to be within one hour).
- For purposes of this rule, a “sale” shall mean the time at which the person actually paid for the last alcoholic beverage served by the licensee to the intoxicated person.

Sale and Service to Minors

Article 7B of Chapter 60 goes into extensive detail about the regulation of sales (selling alcohol) and service (giving alcohol) to a minor.

Definition of a Minor NMSA 1978, Section 60-7B-1 ((E))

As used in the Liquor Control Act, “minor” means a person under twenty-one years of age.

What is the law on buying or selling alcohol to minors?

It is a violation of the Liquor Control Act for a person, including a licensed person or one of his or her employees:

- To sell or give alcoholic beverages to a minor or permit a minor to consume alcohol on the licensed premises,
- To buy alcohol beverages for a minor,
- To deliver alcohol beverages to a minor, or
- Aid or assist a minor to buy, procure or be served with alcoholic beverages. NMSA 1978, Section 60-7B-1 (A).

Are there any exceptions to this law? (yes)

- A parent, legal guardian or adult spouse of a minor may serve alcohol beverages to that minor on property under their control other than a licensed premises, or
- alcoholic beverages are used in the practice of religious beliefs. NMSA 1978, Section 60-7B-1(B).

What is the penalty for selling or giving alcohol to a minor?

- Prior to 2004, it was a misdemeanor. But then two high profile cases occurred in Albuquerque. In one case, a fifteen year old went to a party and drank so much she died. In another case, a teenager drank a great deal, got into his expensive car, crashed, and committed suicide. The legislature decided more severe penalties were in order.
- It is now a fourth degree felony to sell or give or procure alcohol for a minor. NMSA 1978, Section 60-7B-1 (F).

How does the Special Investigations Division (SID) enforce this?

- One way is to send a minor (someone under twenty-one) into a convenience store to buy alcohol. A clerk who sells a minor alcohol is guilty of a fourth degree felony.
- Another way is to place a minor outside a convenience store, asking older people to buy alcohol for him or her. A person who buys alcohol for a minor is guilty of a fourth degree felony.

What if local law enforcement wants to do this kind of operation?

- Law enforcement can do a local operation but cooperation with SID (which works closely with Alcohol and Gaming) is highly encouraged.

Other regulations affecting minors

What can a person use to prove their age or identity?

Evidence of the age and identity may be shown by any document which contains a picture of the person issued by a federal, state, county or municipal government including but not limited to a driver's license or an identification card issued to a member of the armed forces. NMSA 1978, Section 60-7B-2.

What happens if the person doesn't have an identity card?

- Any person licensed pursuant to the Liquor Control Act **shall** refuse to sell or serve alcohol to any person who is unable to produce an identity card as evidence that he or she is twenty-one years of age or over. NMSA 1978, Section 60-7B-5.

What if a minor presents false evidence of age or identity?

- It's a petty misdemeanor. NMSA 1978, Section 60-7B-7.

What about a person who gives an ID card to a Minor?

- Any person who gives, loans, sells or delivers an identity card to a minor with the knowledge that the minor intends to use the identity card for the purpose of procuring . . . alcohol beverages . . . is guilty of a petty misdemeanor. NMSA 1978, Section 60-7B-8.

Can minors ever be permitted on a licensed premises?

- The alcohol and gaming division has authority to adopt regulations classifying the types of licensed premises or areas of licensed premises where minors may be present.
- If so, signs issued by the division shall be posted to licensees to inform the public, including minors, of the areas of the licensed premises open to minors. NMSA 1978, Section 60-7B-10.

Can minors ever work in clubs or restaurants that serve alcohol?

- A person who holds a restaurant or club license may employ persons nineteen years of age or older to sell or serve alcohol in a place that is held out to the public as a place where meals are prepared and the primary source of revenue is food.
- A person under the age of 21 years of age shall not be employed as a bartender. NMSA 1978, Section 60-7B-11.

A COMPREHENSIVE PLAN

But law enforcement, just like the military, needs a strategy, a comprehensive plan. An example of a comprehensive plan follows.

The two prong approach

A two prong approach means that officers attack violations from a criminal and civil perspective.

Criminal

Sale to an intoxicated person is a misdemeanor. Sale to a minor is a fourth degree felony. Prosecution in a criminal court is an effective means to ensure compliance and deter others.

Civil

State statutes give us laws affecting the Liquor Control Act. The Alcohol and Gaming division is able to make rules that provide more specific guidance for us. More serious penalties reflect a policy to go to the root of some of our alcohol-related problems.

Schedule of Penalties

New civil penalties went into effect in 2006. Administrative regulation 15.10.61.8 provides for a schedule of penalties for violations involving sales to minors or intoxicated persons within a twelve (12) month period.

- The first offense will result in a fine from \$1,000 to \$2,000 and suspension of all alcohol sales for one business day.
- The second offense will result in a fine from \$2,000 to \$3,000 and suspension of all alcohol sales for seven business days.
- Three or more offenses **shall** result in a fine of \$10,000 and revocation of the liquor license.
- **Any combination of three offenses** involving sales to minors and/or sales to intoxicated persons occurring within a twelve month period **shall result** in a fine of \$10,000 **and revocation of the liquor license**. (It's three strikes and you're out. The old rule required five convictions).

Are Indian casinos exempted from the Liquor Control Act? (yes)

- One of the exemptions from the Liquor Control Act includes the sale, service, possession or public consumption of alcohol by any person within the boundaries of lands over which an Indian nation, tribe or pueblo has jurisdiction. NMSA 1978, Section 60-3A-5.

AGENCIES HELPING TO REDUCE VIOLATIONS

Additional ways for field officers to assist

- On a DWI stop, officers normally ask if a person has been drinking and how much. Some additional questions might be helpful: (1) what time did you have your last drink and (2) where did you have your last drink? This will help civil and criminal prosecution.

Additional ways for the District Attorney's Office to assist

One effective tool for the District Attorney's office to use is the public nuisance statute. NMSA 1978, Section 60-7A-15.

- Any premises used for the unlawful sale . . . or consumption of alcoholic beverages in violation of the Liquor Control Act is a public nuisance.
- The district attorney in the country in which the nuisance exists is authorized to go to court to stop the nuisance. Unlike most civil actions, the district attorney is not required to post bond.
- Upon final judgment, the court shall take the actions necessary to close the premises or permit it to continue conditioned upon the premises not being continued as a public nuisance.

CONCLUSION

The advantage of enforcing the Liquor Control Act is that we are going at the root of the problem, especially those who sell to minors or intoxicated persons. Local law enforcement agencies and the Special Investigations Division, working together, can be effective in reducing alcohol abuse and related crimes.

